

Public Meeting on Operator Qualification

January 22, 2003

Stacey Gerard Talking Points, Rev 1

1. About Our Job as Regulators

As regulators, it is our job to ensure the safest possible pipeline systems – through achievable solutions – to recurring problems.

We strive to achieve our goal through a range of solutions, often through regulation that we hope is enlightened regulation.

A review of pipeline accident history shows that operator error is a recurring problem. It has contributed significantly to pipeline failures.

OPS, the states and the pipeline industry have worked to develop an achievable solution -- a rule designed to increase our assurance that tasks affecting pipeline integrity are performed by people who are qualified.

On August 27, 1999, we published a rule intended to eliminate operator errors and the accidents to which operator error contributes.

2. It was a Different Environment three years ago when we developed the “achievable solution”

It was said of the environment at that time:

There is the absence of a proactive regulatory environment... a context that is comprehensive, progressive, proactive and trusted by those whose interests it is meant to protect. There is nowhere the sense that the Office of Pipeline Safety is in charge... or that its regulations, its inspections, its assets, its staffing and its spirit are adequate to the task.... Industry, as much as the government, is responsible for the deficiency. Remarks of Jim Hall, December, 1999.

OPS had, at the time, 65 items of unfinished business with the Congress, GAO, NTSB and the DOT IG. A series of significant accidents had captured a lot of public attention and galvanized others to action.

For OPS, it was a time to redesign our approach. We tested ways to do a better job at regulation and inspection, and learned that we needed to focus on the management of systems to control risks, in addition to addressing the individual threats – **to be proactive, not reactive.** .

We committed to clear up our record on the 65, which led to a lot more regulation, and a significant raising of the safety bar. We knocked off more than half the actions owed. We got off the NTSB Most Wanted List and started raising our reputation at the NTSB. GAO gave us a good review on inspection methods we were using for Liquid IMP. The signs of an improving industry safety performance record were starting to appear.

With a little new found confidence that we were on the right path of “enlightened regulation”, we refocused on the Achievable Solution of 3 years ago and determined to make the OQ rule effective in today’s environment.

The rule was designed to allow operators almost total flexibility in their approach to addressing the OQ issue.

It was characterized as a performance type rule, but contained no measures by which trends in performance could be monitored.

It should more appropriately be characterized as a management-based rule since it requires implementation of an OQ Program that either includes or implies the need for several management practices.

3. Addressing the Real Issue – Managing Qualification of personnel

Our approach to inspecting compliance with provisions of the rule must ensure that we address the issues that prompted the rule in the first place.

We are planning to do this both by rigorously inspecting compliance with the prescriptive requirements of the rule, and by evaluating the elements of the programs operators have implemented to satisfy these requirements.

Inspection against provisions of a management-based rule is different from inspection of a purely prescriptive rule.

A management-based rule provides flexibility in how operators evaluate, justify and change their practices to satisfy the intent of the rule within their unique operating environment.

While such changes are designed to lead to improved performance, they will not immediately manifest themselves in recognizable changes in performance.

In addition, performance results will likely vary significantly from operator to operator depending on factors such as the extent of management involvement; the maturity of operator practices; and the knowledge, skills and physical capability of individuals performing covered tasks.

4. While performance is the ultimate proof, we need interim validation

The Achievable Solution developed in a different environment must pass muster in today's environment – otherwise known as the Red Faced Test.

While the ultimate proof of the effectiveness of operator OQ programs will be demonstrated through a continuing review of performance trends, regulatory bodies cannot await performance results to validate the effectiveness of operator programs.

Therefore, inspection of operator implementation of the OQ Rule must evaluate compliance with its prescriptive provisions and evaluate the completeness and anticipated effectiveness of approaches to qualify individuals and to ensure they remain qualified.

5. We've seen a lot of progress in recent years, but our expectations have not been met

In the years since publication of the OQ rule, pipeline operators have expended considerable resources developing the infrastructure for programs designed to attain the rule's objectives.

OPS and states initial reviews have found that these efforts have moved the industry a long way down the road toward attaining these objectives.

However, our recent efforts to develop and test an inspection approach that investigates the completeness of operator qualification programs have revealed areas where we have a way to go.

We have organized this public meeting discuss our expectations, as well as that of the public, the states and the industry, **on how inspectors should examine each operator's compliance with provisions, using a common set of protocols.**

This Public Meeting is intended to be a working session in which OPS and states describe an approach to inspecting operators against provisions in the Operator Qualification Rule and seeks views of the states, industry and the public on this approach.

Where differences of opinion are identified, we will seek to understand the basis for the differences and, when possible, to identify a path forward for resolving these differences.

OPS is committed to move forward rapidly to ensure that the objectives of the Operator Qualification Rule are met. We expect that progress will involve continuing collaboration among the stakeholders in pipeline safety.

So, We Developed a Set of Protocols ...

OPS decided several months ago to develop questions to support inspectors examination of compliance.

Our goals were to

- (a) improve the communication of regulatory expectations with states and the industry,
- (b) support improved consistency of inspections conducted by various regulatory groups, and
- (c) provide assurance of the stability of the end point toward which we are moving with OQ

6. Congress Liked this Idea Also

On December 17, Congress has imposed new requirements on OPS and states in the Pipeline Safety Law.

Significantly, we are required to develop standards and criteria for operator OQ Programs by no later than December 17, 2003.

The protocols we are developing to inspect operator OQ Programs are these standards.

These protocols, together with a set of criteria that we are proposing be developed jointly with industry to conservatively bound key OQ factors such as reevaluation intervals, will address the new Congressional requirements.

Two of the more important provisions related to Operator Qualification require:

- *Development of standards and criteria for operator qualification programs by December 17, 2003.* We plan to satisfy this requirement by finalizing the set of inspection protocols (standards) I discussed earlier, and by clarifying these protocols by (a) use of supplementary guidance, (b) documentation of the ingredients in a successful OQ program (criteria), and (c) documentation of examples of practices that satisfy these criteria (benchmarks).
- *Review and verification that the provisions of the statute have been satisfied by December 17, 2005.* Collaboratively with the states, OPS intends to conduct initial inspections of all operators to which the rule applies within the stipulated three year period. As I mentioned earlier, these inspections will focus on ensuring that prescriptive requirements of the rule have been satisfied and evaluating the tangible evidence through which the operator (a) describes the approach it is taking to satisfy our expectations, and (b) clarifies the time frame on which these actions will be completed.

7. Improvement Takes Time

We realize that the decision to develop inspection protocols was made relatively recently compared to the time when operators began working to satisfy requirements of the OQ Rule.

These protocols are only now being finalized.

OPS understands that the OQ Rule and associated inspection protocols significantly raise the bar for safety.

Therefore, it is reasonable that attainment of the expectations reflected in the new protocols will take time.

8. We Needed a New Compliance Tool Reflecting This Approach.

We have modified our intended approach to enforcing the rule to put greater focus on achieving continuous improvement, providing time for improvement in a structured environment.

We are finalizing development of a new compliance tool to be called something like “Notice of Area of Recommended Improvement” (NARI).

We believe that such a tool is needed to provide an option in promoting improvement for operators who are making a strong effort to address the letter and spirit of the rule, but have not yet completed development of a fully satisfactory Program.

This tool will be integrated into the set of compliance and enforcement tools available to us as follows.

- If the operator's procedures and processes required by the rule are not adequate, *but* the operator has demonstrated an understanding and appreciation of what it would take to produce adequate procedures and has indicated a commitment to make such improvements, the new compliance tool (NARI) will be issued.
- If the operator's procedures and practices required by the rule are not adequate *and* the operator has demonstrated little understanding of what it would take to produce adequate procedures (or no willingness to do so), then an NOA will be issued.
- If there is clear non-compliance with requirements of the rule that can not be easily remedied by the operator and which indicate a lack of serious intent to comply with the objectives of the rule, an NOPV will be issued.

9. How Does All this Get Started

Initial inspections will focus on evaluating compliance with prescriptive provisions of the rule.

However, regulators need a tangible basis on which to assure that each operator being inspected understands regulatory expectations associated with the performance aspects of the OQ Rule, and that it intends to meet these expectations over a reasonable time period.

Therefore, regulators will look for tangible evidence in an operator's program that operators are planning for future improvements to their programs in the coming months and years.

This evidence could take the form of a plan or other approach that (a) describes the approaches the operator is taking to satisfy our expectations and (b) clarifies the time frame on which these actions will be completed.

Review of this evidence will be an integral part of early inspections.

An *example* of an evolutionary approach for OQ follows.

This is just an example and is not intended to impose new requirements. The rule requires that, following an incident or accident, operators determine whether an individual's performance of a covered task has contributed to the incident or accident.

This requirement implies the need for a method for identifying contributing factors to an incident or accident, and, if performance of a covered task is such a contributor, for determining which individual performed that covered task.

Most operators currently have some method to evaluate contributing factors to an incident or accident and some set of records that could be used to identify which individual (or group of individuals) performed that task.

These records may be very difficult to access and interpret, but they usually exist. Initially, an operator's OQ program could simply reference the existing method and records.

An improvement plan could describe how, at some intermediate time, the operator would enhance the approach to identifying individuals who contribute to incidents or accidents by improving the accessibility of supporting records.

Ultimately the operator could choose to update its cause analysis methodology to include near-misses, and to develop a way to simplify the documentation and communication necessary to identify individuals whose performance of a covered task may have contributed to an incident or accident – access to information being key.

10. Some other thoughts about How To Be Even More Successful

Operators may benefit in more than one way if they include details in their programs about long-range objectives and how they expect their programs to improve with time.

This approach - an evolutionary approach - will allow operators to incorporate approaches that satisfy the standards and criteria required by the new statute in their programs.

Such standards and criteria, as well as benchmarks for acceptable approaches to satisfy the standards, are being planned to support efficient evolution of needed OQ practices.

Such an evolutionary approach toward a well defined end point will also support the regulatory stability that both industry and regulators need.

11. Keeping Regulation Enlightened

You should not infer from my remark on the value of evolving practices that OPS intends to keep moving the target operators are trying to hit with their OQ Programs.

We recognize the significant resource commitment that operators have already made to OQ.

We also recognize that you have some concerns about the additional resources that may be required to deal with the standards and criteria we are developing.

It is clearly in everyone's best interest to ensure a stable regulatory environment. Such an environment must, however, address new issues as they are recognized.

It must also allow, or perhaps even promote, recognition and implementation of better ways to achieve our shared objectives. Such better, or noteworthy, practices will often improve safety *and* result in greater efficiency in the use of resources.

12. Making Sure The Achievable Solution Works In Today's Environment

As I noted earlier, this meeting represents a watershed in our efforts to achieve the objectives of the OQ Rule.

During the meeting I expect issues to be raised and discussed that will have a profound impact on the future of this effort.

Based on the results of this meeting, we at OPS along with our state partners and industry stakeholders will complete the inspection protocols, begin development of criteria and benchmarks, and proceed with the legislatively mandated inspections.

We expect to secure agreement among stakeholders on resolution of the major issues.

Where expansion of the rule is needed, primarily to add new construction activities as covered tasks, we plan to begin supplementary rulemaking. To ensure that all stakeholders have access to information on the status of our efforts, we will complete

a publicly available web site on which current information will regularly be posted.

With these remarks as a backdrop, we will proceed with the meeting agenda.

First Richard Sanders, who has run the gauntlet necessary to led our efforts on OQ, will discuss the status and direction of the inspection process.

Warren Miller, who has tirelessly assisted Richard Sanders in moving ahead with OQ inspections, will discuss insights from our data gathering and initial inspection efforts.

Following presentation of perspectives from states and the industry, we will conduct facilitated discussions of the major issues related to OQ implementation and inspection.

At several times during the agenda members of the public will have opportunities to raise questions and make statements.

I'd like to underline that these opportunities are not commercial breaks, but rather opportunities to present perspectives not otherwise scheduled.

As you can see from the agenda, we are on a very tight schedule today. We apologize for not being able all the topics as thoroughly as we would like. With this in mind, I ask you to keep your comments and questions focused and brief.

Finally, I will wrap up the meeting with my observations and thoughts on the actions that must be undertaken to move forward with assuring the objectives of the OQ Rule are met.